

SECOND REGULAR SESSION

# SENATE BILL NO. 929

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DIXON.

Read 1st time January 19, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6039S.011

## AN ACT

To repeal section 556.046 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session, and section 556.046 as enacted by senate bill no. 223, ninety-first general assembly, first regular session, RSMo, and to enact in lieu thereof one new section relating to jury instructions on included offenses.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 556.046 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session, and section 556.046 as enacted by senate bill no. 223, ninety-first general assembly, first regular session, RSMo, are repealed and one new section enacted in lieu thereof, to be known as section 556.046, to read as follows:

556.046. 1. A person may be convicted of an offense included in an offense charged in the indictment or information. An offense is so included when:

(1) It is established by proof of the same or less than all the facts required to establish the commission of the offense charged; or

(2) It is specifically denominated by statute as a lesser degree of the offense charged; or

(3) It consists of an attempt to commit the offense charged or to commit an offense otherwise included therein.

2. The court shall not be obligated to charge the jury with respect to an included offense unless there is a **rational** basis for a verdict acquitting the person of the offense charged and convicting him of the included offense. An offense is charged for purposes of this section if:

(1) It is in an indictment or information; or

(2) It is an offense submitted to the jury because there is a **rational** basis

15 for a verdict acquitting the person of the offense charged and convicting the  
16 person of the included offense.

17         3. The court shall be obligated to instruct the jury with respect to a  
18 particular included offense only if there is a **rational** basis in the evidence for  
19 acquitting the person of the immediately higher included offense and there is a  
20 **rational** basis in the evidence for convicting the person of that particular  
21 included offense.

22         4. **For purposes of this section, "rational basis" means a basis**  
23 **wherein a reasonable juror could draw inferences from the evidence**  
24 **presented that an essential element of the greater offense has not been**  
25 **established and that would warrant convicting the defendant of the**  
26 **lesser offense.**

27         5. **It is the intent of the legislature to reject and abrogate earlier**  
28 **case law relating to required lesser-included offense instructions,**  
29 **including the holding in State v. Jackson, 433 S.W.3d 390 (Mo. banc**  
30 **2014) and all cases citing, interpreting, applying, or following that case.**  
31 **It is the intent of the legislature to apply these provisions retroactively.**

556.046. 1. A defendant may be convicted of an offense included in an  
2 offense charged in the indictment or information. An offense is so included when:

3         (1) It is established by proof of the same or less than all the facts required  
4 to establish the commission of the offense charged; or

5         (2) It is specifically denominated by statute as a lesser degree of the  
6 offense charged; or

7         (3) It consists of an attempt to commit the offense charged or to commit  
8 an offense otherwise included therein.

9         2. The court shall not be obligated to charge the jury with respect to an  
10 included offense unless there is a **rational** basis for a verdict acquitting the  
11 defendant of the offense charged and convicting him of the included offense. An  
12 offense is charged for purposes of this section if:

13         (1) It is in an indictment or information; or

14         (2) It is an offense submitted to the jury because there is a **rational** basis  
15 for a verdict acquitting the defendant of the offense charged and convicting the  
16 defendant of the included offense.

17         3. The court shall be obligated to instruct the jury with respect to a  
18 particular included offense only if there is a **rational** basis in the evidence for  
19 acquitting the defendant of the immediately higher included offense and there is

20 a **rational** basis in the evidence for convicting the defendant of that particular  
21 included offense.

22 **4. For purposes of this section, "rational basis" means a basis**  
23 **wherein a reasonable juror could draw inferences from the evidence**  
24 **presented that an essential element of the greater offense has not been**  
25 **established and that would warrant convicting the defendant of the**  
26 **lesser offense.**

27 **5. It is the intent of the legislature to reject and abrogate earlier**  
28 **case law relating to required lesser-included offense instructions,**  
29 **including the holding in State v. Jackson, 433 S.W.3d 390 (Mo. banc**  
30 **2014) and all cases citing, interpreting, applying, or following that case.**  
31 **It is the intent of the legislature to apply these provisions retroactively.**

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Bill

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